Claims Report

United States Army Claims Service

Personnel Claims Note

Reengineering Update

The military has a number of projects designed to revise or "reengineer" the way personal property is shipped. The Army is testing a program in Georgia, in which a single contractor, Cendent Mobility, is providing a package of relocation services, including shipping household goods and settling claims, to soldiers departing Hunter Army Airfield. The Military Traffic Management Command (MTMC) is testing a similar program in Florida, South Carolina, and North Carolina in which a number of contractors are shipping household goods from a number of Army, Navy, Air Force, and Marine Corps installations. The Navy is testing a program under which sailors are permitted to make their own shipping arrangements.[1] This note provides an update on each of these programs.

The Army program at Hunter Army Airfield began in July 1997. Army officials at the Office of the Deputy Chief of Staff for Logistics have hailed this program as a success, citing an eleven percent increase in customer satisfaction and an average claims settlement time of nine days. However, the General Accounting Office has not endorsed these findings and the moving industry has expressed reservations about the program's effectiveness.[2] Plans are currently underway to expand this program to other locations within the continental United States, including Air Force, Navy, and Marine Corps installations.[3] This expansion will not occur until next year, at the earliest.

The MTMC program began in January 1999 and covers fifty percent of the household goods shipments from North Carolina, South Carolina, and Florida. A total of forty-one contractors are currently participating in this program and, as of 25 March 1999, these contractors had accepted 1457 shipments.[4] It is far too early to tell how successful the program will be.

The Navy program, dubbed the Sailor Assisted Move or "SAM" program, applies only to shipments originating from Puget Sound, Washington; San Diego, California; Norfolk, Virginia; and New London, Connecticut. The Navy reports that 133 sailors took advantage of this program in 1998. Customer satisfaction with this program is reported to be very high.[5] Since sailors make their own shipping arrangements, the Navy has taken the position that their claims offices will not compensate sailors for damage or loss resulting from these moves.

It is still too early to tell whether any of the military's household goods reengineering efforts will ultimately be successful. It is too early to evaluate the success of the claims aspects of these programs. Field claims personnel should look for future updates on these programs in *The Army Lawyer* and the JAGCNet (Lotus Notes) system. Lieutenant Colonel Masterton.

Tort Claims Note

In-Scope Privately Owned Vehicle (POV) Collisions

Using a POV for official business by service members and government employees is a frequent occurrence. Where the use is properly authorized by a supervisor, and the United States Attorney determines the user to be acting within the scope of employment, the user is immunized for any civil tort action, either at state or federal levels.[6] This has been the law since the passage of the so-called Driver's Act in 1961.[7]

Simply stated, the exclusive remedy for a civil tort action for an in-scope driver in the United States, its territories, and possessions is against the United States under the Federal Tort Claims Act (FTCA).[8] In *Kee v. United States*,[9] the Ninth Circuit held that a release in full of all parties signed by the injured parties after payment of the user-government employee's policy limits by the liability carrier did not release the United States. The court held this, despite the argument that Arizona law would release the employer under similar circumstances. The

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1. *See generally* Lieutenant Colonel R. Peter Masterton, *Reengineering Household Goods Shipments: Personnel Claims Implications*, ARMY LAW., Nov. 1997, at 15.

2. Scott Michael, *Hearing on DOD Full Service Moving Project*, GOV'T TRAFFIC NEWS, Apr. 22, 1999, at 1.

3. Lisa Roberts, Office of the Deputy Chief of Staff of Logistics, briefing on transportation policy (Jan. 12, 1999).

4. Scott Michael, *Re-engineering News*, GOV'T TRAFFIC NEWS, Apr. 22, 1999, at 3.

5. Scott Michael, *Navy Test (SAM)*, GOV'T TRAFFIC NEWS, Apr. 22, 1999, at 3.

6. 28 U.S.C.A. § 2679(b)(1) (West 1999).

7. Pub. L. No. 87-258, 75 Stat. 539 (1961). On November 18, 1988, the Westfall Act expanded immunity to include all in-scope conduct. *See* Pub. L. No. 100-694, 102 Stat. 4564 (1988).

court held Arizona law inapplicable, as it does not consider a situation in which the employee is immune.[10] The Fourth Circuit reached a similar conclusion in *Garrett v. Jeffcoat*, holding that a release in South Carolina did not release the United States due to the immunity clause.[11]

Underlying the state rule that a general release releases both the employer and the employee is the legal principle that an employer may seek indemnity against the employee. This is not true under federal tort law, as the United States may not seek indemnity from its employees.[12] Does this lead to the premise that, where the immunized government employee's liability carrier settles with the injured party, the carrier then may seek indemnity from the United States? In *United States Automobile Association v. United States*,[13] the court held that neither the United States Automobile Association nor the employee was entitled to indemnity because FTCA procedures were not followed; the case was never removed to federal court and the injured party never made an administrative claim against the United States.

When the liability carrier pays a portion of the damages and the injured party seeks further relief from the United States under the FTCA, the United States is entitled to an offset, as the injured party is entitled to only one full recovery.[14] The United States may additionally seek contribution from its employee's liability carrier on the basis that it authorized the use of the POV and paid the employee for mileage.[15] Contribution may be sought even where the liability policy contains an exclusionary clause.[16] Such a clause must be valid under the law of the state in which the insurance contract was entered. The clause may be invalid if it is too vague or ambiguous,[17] or the clause may be in violation of public policy.[18] In *New Hampshire Insurance Co. v. United States*,[19] the United States recovered the policy limits, plus interest, where the insurer tried to conceal that the United States was an additional named insured.

The U.S. Army Claims Service's (USARCS) policy is to compensate injured parties for the full extent of their injuries if the United States is liable. Where a release has been obtained from the United States employee's carrier in exchange for benefits which only partially compensate the injured party, any administrative claim should not be denied solely on the basis of the release. Additional compensation necessary for adequate recovery of all compensable damages should be paid. However, where the injured party has only sought recovery against the United States, and scope of employment has been established, a copy of the employee's POV policy should be obtained. A mirror copy of the file will be forwarded to USARCS in each case to determine whether contribution will be sought against the carrier in question.[20] Mr. Rouse.

Winners of 1998 Award for Excellence in Claims

This past June, the U.S. Army Claims Service announced the winners of the 1998 Judge Advocate General's Award for Excellence in Claims. This is the first year that the Claims Service has held a competition for this award. Thirty-five claims

8. The use of a POV for official business outside the United States can give rise to a claim under a Status of Forces Agreement (SOFA); the Foreign Claims Act, 10 U.S.C. A. § 2734 (West 1999); or the Military Claims Act, 10 U.S.C.A. § 2733 (West 1999). Whether the user can be sued individually turns on his status, that is, an applicable SOFA may prohibit the enforcement of a judgment or the user may have diplomatic immunity.

9. 168 F.3d 1133 (9th Cir. 1999).

10. The Tenth Circuit Court rejected the holding of *Kee v. United States* in *Scoggins v. United States*, 444 F.2d 74 (10th Cir. 1971) (holding that covenant not to sue was upheld under Oklahoma law as under the FTCA; the United States is sued as though it were a private person under state law).

11. 483 F.2d 590 (4th Cir. 1973). *Accord* Bienville Parish Police Jury v. United States Postal Service, 8 F. Supp. 2d 563 (W.D. La. 1998).

12. United States v. Gilman, 347 U.S. 507 (1954).

13. 105 F.3d 185 (4th Cir. 1997).

14. Branch v. United States, 979 F.2d 180 (2nd Cir. 1963); Kassman v. American Unv., 546 F.2d 1029 (D.C. Cir. 1976); Dickun v. United States, 490 F. Supp. 136 (W.D. Pa. 1980); Collins v. United States, 708 F.2d 499 (10th Cir. 1983).

15. *See* Patterson v. United States, 233 F. Supp. 447 (E.D. Tenn. 1964); Government Employees Ins. Co. v. United States, 349 F.2d 83, 84 (10th Cir. 1965); United States v. Myers, 363 F.2d 615, 617 (5th Cir. 1966); Harleyville Ins. Co. v. United States, 363 F. Supp. 176, 177 (E.D. Pa. 1973). *See also* Rowley v. United States, 146 F. Supp. 295 (D. Utah 1956); Irvin v. United States, 148 F. Supp. 25 (D. S.D. 1957); Grant v. United States, 271 F.2d 651 (2d Cir. 1959). *See generally* Major Kee & Lieutenant Colonel Jennings, *Exclusion of Government Driver from Private Insurance Coverage*, ARMY LAW., Dec. 1996, at 34.

16. Such a clause excludes application of benefits where the FTCA provides a remedy.

17. Ogina v. Rodrigues, 799 F. Supp. 626 (M.D. La. 1992); Comes v. United States, 918 F. Supp. 382 (M.D. Ga. 1996); Lentz v. United States, 921 F. Supp. 628 (N.D. Iowa 1996).

18. Reeves v. Miller, 418 So. 2d 1050 (Fla. App. 1982).

19. No. 95-55245, U.S. App. Lexis 28171 (9th Cir. Aug. 2, 1996).

20. U. S. DEP'T OF ARMY, REG. 27-20, CLAIMS, para. 2-27 (31 Dec. 1997). *See* Kee & Jennings, *supra* note 15.

offices submitted applications for the award, out of a total of over 150 offices eligible. The following nine offices were winners:

Eisenhower Medical Center, Fort Gordon, Georgia
White Sands Missile Range, New Mexico
Fort Riley, Kansas
Fort Knox, Kentucky
Fort Leavenworth, Kansas
Fort Monmouth, New Jersey
Northern Law Center, Belgium
Fort Bliss, Texas
Fort Sam Houston, Texas

The award required offices to provide outstanding services in a number of areas, including tort, personnel, affirmative, and disaster claims. Among other things, the award required offices to process claims promptly and fairly, coordinate claims issues with other organizations on post, publicize claims issues, and send claims professionals to appropriate training. The criteria for this award were extremely demanding, resulting in only nine offices winning the award. The number of winners may increase in the future as more offices comply with the award criteria, and improve the quality of claims services everywhere. Lieutenant Colonel Masterton.